IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.3801/07
Kaluram & Anr. Vs. Smt. Prabati & Ors.

20.08.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Sudesh Bansal for petitioner.

Heard learned counsel for the petitioner.

The petitioner who is defendant in the civil suit has challenged the order dated 18th April, 2007 whereby the application of the plaintiff seeking amendment in the plaint filed under Order 6 Rule 17 CPC has been allowed.

The learned counsel for the petitioner argued that in the originally filed plaint, the plaintiff did not set up the case that the succession and

inheritance would be governed by the customs and usages and it is only when the defendant in their written statement raised this plea and stated that provisions of Hindu Succession Act would not govern the conditions of succession and inheritance because the parties are Meena by-caste and therefore are S.T. It was thereafter that the plaintiff sought to amend the plaint which has been illegally allowed by the trial court. The learned counsel for the petitioner argued that written statement was filed on 13th July, 2005 thereafter issues were framed on 17th October, 2005. With the framing of the issues the trial should be deemed to have been commenced and in view of law laid down by Hon'ble Supreme Court in Ajendraprasadji N. Pande & Anr. Vs. Swami

Keshavprakeshdasji N. & Ors., JT 2007(1) SC 579, the amendment after the commencement of the trial cannot be allowed.

Having heard the learned counsel for the parties and perused the material on record, I find that the plaintiff wanted to plead in the plaint that they are Meena by caste and therefore apart from the fact that the provisions of Hindu Succession Act had not been applied to them, in their community there is a custom that the daughter, daughter in law and daughter of the son also inherit the property of the grandfather. In order to prove the custom, therefore, the pleadings were allowed to be inserted as para (9) in the originally filed suit. The judgment of the Hon'ble Supreme Court

on which the leaned counsel has placed reliance turned out on its own facts. That was a case in which the application for amendment was made after number of adjournments granted to the plaintiff, evidence of third witness and after the recording of evidence of plaintiff no.1 and 2 was complete and other witnesses on behalf of respondent-plaintiffs were also examined but in that case too their Lordships held that the party has to whey the facts sought to be placed on record by way of amendments could not have been pleaded earlier in spite of due diligence. That case does not apply to the facts of the present case. The learned counsel in the course of arguments admitted that only one witnesses i.e. plaintiff himself had been

examined when the application for amendment was allowed. I therefore do not find any such illegality in the impugned order as may warrant interference by this Court.

The writ petition is therefore dismissed.

(Mohammad Rafiq),J.

Rs/-